BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services to South Carolina	)	CC Docket No. 97-208

REPLY OF SPRINT COMMUNICATIONS COMPANY L.P.

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ITS ATTORNEYS

November 14, 1997

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Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby replies to the numerous comments and oppositions filed in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

In addition to the many problems demonstrated by Sprint and other commenting parties, BellSouth's application and the comments filed in support of the application suffer from the following three flaws. First, BellSouth has now made clear to Sprint that it will not permit CLECs to recombine unbundled network elements ("UNEs") to provide retail services already offered by BellSouth. This position violates the terms of Section 251(c)(3) as well as the Eighth Circuit's Iowa Utils. Bd. decision. BellSouth's failure to disclose its position on recombined UNEs also constitutes a violation of the standards of truthfulness and candor to which all Section 271 applications should be held. Second, BellSouth has incorrectly stated that a BOC is required to comply with the requirements of Section 272 only after it has received approval of its Section 271

application. Finally, contrary to the argument made by Ameritech in its comments, the Commission should not rely solely on implementation schedules in interconnection agreements to determine whether the Track A standard applies.

I. BELLSOUTH REFUSES TO PERMIT CLECS TO COMBINE UNES TO PROVIDE SERVICES BELLSOUTH OFFERS AT RETAIL.

Although BellSouth's SGAT appears to permit CLECs to recombine UNEs to provide end user services, Sprint and other CLECs have learned that BellSouth insists that the wholesale discount for resold services applies where UNEs are combined to provide end user services provided by the incumbent. The Commission should therefore make clear what BellSouth no doubt already knows: Where a CLEC without any independent facilities of its own purchases and recombines UNEs for the purpose of providing finished services, including finished services provided by the incumbent, federal law mandates that the BOC charge the CLEC the cost-based rates applicable to unbundled elements. Any attempt to apply the resale discount in this context will not only prevent a BOC from receiving Section 271 approval, but will also constitute an independent violation of Section 251(c)(3) and the Commission's rules. Furthermore, the failure of BellSouth to disclose fully its position on UNE combination pricing is itself independent and sufficient grounds for dismissal. Given the brevity of the processing period, and the size and significance of the task, the Commission should insist on full disclosure and forthrightness from Section 271 applicants.

A. BellSouth's Position Has Become Clear Only through this Proceeding.

BellSouth's SGAT states that "CLECs may combine BellSouth network elements in any manner to provide telecommunications services."[1] BellSouth did not attempt to qualify this position in its brief in support of the instant application. The brief simply states in the context of a discussion of precombined UNEs that the authority to approve pricing of UNEs and resale services falls within the "exclusive jurisdiction" of the SCPSC.[2]

In a recent letter to Melissa Closz, Sprint Communications Company L.P.'s Director-Local Market Development, however, BellSouth stated as follows:

> [W]hen Sprint Communications orders a combination of UNEs or orders individual UNEs that, when combined, duplicate a retail service, BellSouth will treat these orders for the purposes of billing and provisioning, as resale.[3]

BellSouth has taken a similar position in letters to LCI and AT&T. LCI attached as an exhibit to its comments a letter dated October 7, 1997 from BellSouth to LCI in which BellSouth stated as follows:

> In all states, when LCI orders individual network elements that, when combined by LCI, duplicate a retail service provided by BellSouth, BellSouth will treat,

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1 See BellSouth SGAT at § II.F.1.

2 See BellSouth Br. at 39.

3 See Appendix, Letter from Pat Finlen, BellSouth Telecommunications, Inc. Manager, Interconnection Services Pricing to Melissa Closz, Sprint Communications L.P.'s Director, Local Market Development (Nov. 4, 1997).

for purposes of billing and provisioning, that order as one for resale.[4]

With the benefit of context, LCI understands BellSouth to be saying that the resale discount price will be charged.[5] Though AT&T does not address this issue in its comments, it included as an attachment to its comments a letter from BellSouth containing similar language.[6]

B. BellSouth's Position Is Unlawful.

There is no legal basis for BellSouth's position on recombined UNEs. Subsection 251(c)(3) allows "any requesting

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[4] See Speestra Decl. at Exh. E., Letter from BellSouth to LCI (Oct. 7, 1997).

[5] See LCI Br. at 14; Speestra Decl. at ¶ 12.

[6] AT&T's Vice President - Local Services for the Southern States, Jim Carroll, cites to the language in AT&T's arbitrated interconnection agreement with BellSouth which states as follows:

> AT&T may purchase unbundled Network Elements for the purpose of combining Network Elements, whether those elements are its own or are purchased from BellSouth, in any manner it chooses to provide service. If Network Elements are rebundled to produce an existing tariffed retail service, the appropriate price to be charged to AT&T by BellSouth is the wholesale price (discounted retail price).

BellSouth-AT&T Interconnection Agreement at 1.A. On September 12, 1997, BellSouth wrote to AT&T that "when AT&T orders a combination or network elements or orders individual network elements that, when combined, duplicate a retail service provided by BellSouth, BellSouth will treat, for purposes of billing and provisioning, that order as one for resale." Letter from Mark Feidler, BellSouth Telecommunications, Inc., President-Interconnection Services, to W.J. Carroll (Sept. 12, 1997). AT&T understands this letter to be consistent with the BellSouth-AT&T interconnection agreement. Carroll Aff. at ¶ 23.

telecommunications carrier" to lease UNEs to provide "a telecommunications service," and imposes a duty upon ILECs to provide "unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."[7] That provision further requires that the cost-based rate established for UNEs pursuant to Section 252(d)(1) apply where UNEs are used to provide telecommunications services.[8] Resold services, on the other hand, are to be priced at the retail rate less a discount.[9] Nothing in the statute indicates that the resale discount would apply where the requesting carrier uses recombined UNEs to provide services already provided by the incumbent. Such a restriction would permit CLECs without their own independent facilities to use recombined UNEs to provide only the narrow set of services not provided by the incumbent. Stated another way, such a restriction would in most cases require a requesting carrier to combine UNEs with its own independent facilities in order to qualify for the UNE cost-based rate.

But the Eighth Circuit has explicitly rejected such a distorted interpretation of Section 251(c)(3). In Iowa Utils. Bd. v. FCC, the Eighth Circuit confirmed that requesting carriers

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[7] 47 U.S.C. § 251(c)(3).

[8] 47 U.S.C. § 252(d)(1).

[9] 47 U.S.C. § 251(d)(3).

may combine UNEs to provide finished services.[10] The Court also emphasized that Section 251(c)(3) "imposes a duty on incumbent LECs to provide unbundled access 'to *any* requesting telecommunications carrier for the provision of a telecommunications service.'"[11] The Court concluded that "*any* requesting telecommunications carrier" includes carriers that rely exclusively on UNEs to provide finished services.[12] As the Court found, this logic mandates that such finished services include those already provided by the incumbent.

Indeed, the Eighth Circuit also explicitly rejected the argument, implicit in BellSouth's letters to CLECs, that permitting carriers to provide the same services via leased UNEs and resale eviscerates the distinction between the two. Consistent with accepted principles of statutory construction,[13] the Court found that the UNE section -- 251(c)(3) -- poses greater risks and offers greater opportunities for requesting carriers and is therefore quite different from the resale section -- 251(c)(4).[14]

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10 See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 814-815 (8th Cir. 1997).

11 See id. at 814 (emphasis in original).

12 See id.

13 "[T]he entire act must be read together because no part of the act is superior to any other part." Sutherland Stat Const § 47.02 -- (5th Ed) (citation omitted).

14 See Iowa Utils. Bd. v. FCC, 120 F.3d at 815.

Nor could BellSouth fall back on the statement in its brief that this is simply a pricing issue subject to the exclusive jurisdiction of the states. In finding that the FCC has jurisdiction to define UNEs and in upholding the FCC's rules permitting requesting carriers to rebundle UNEs to provide finished services, the Eighth Circuit confirmed that such considerations fall squarely within the FCC's jurisdiction. Thus, under Iowa Utils. Bd. v. FCC, the FCC has the jurisdiction to determine *when* the UNE and resale rates apply while the states have the jurisdiction to determine *what* the UNE and resale rates will be.[15] Any attempt to squeeze the definitional issues within the states' jurisdiction over pricing would eviscerate the FCC's authority to define UNEs under Section 251(d)(2).

C. BellSouth Violated Its Duty of Candor in Obscuring Its Position on UNE Unbundling.

The record as fleshed out by third party submissions makes plain that BellSouth had failed to disclose important facts to the FCC. Its true position on recombined UNE pricing was obscured from the Commission in the application. This alone is sufficient grounds for dismissal.

The Commission should use this application as an opportunity to warn all BOC applicants of the standards of truthfulness and

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[15] Of course, under BellSouth's interpretation, the incumbent would have the ability to force a competitive LEC to accept the wholesale discount for resold services simply by offering a service that is provided by the competitive LEC over UNEs. This would place the definitional issue within the jurisdiction of the *incumbent LEC*.

candor to which these Section 271 applications will be held. The brevity of the statutory period and the importance of the issues raised requires nothing less than full disclosure. This standard is the one applied to both common carrier and broadcast applicants before the FCC, and thus should be fully applicable under Section 271 as well.[16]

An applicant is deemed to lack candor where it fails "to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited."[17] To constitute a lack of candor, an applicant need not be found to have affirmatively misrepresented the facts. In RKO General, Inc. v. FCC, the D.C. Circuit stated: "We need not decide whether RKO's pleadings were affirmatively misleading - *it is enough to find that they did not state the facts.*" [18] Therefore, omissions alone can lead to the disqualification of an FCC license application based on a finding of lack of candor. See generally, R. Davis, Recent Decisions of

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[16] Long before an application is filed, the BOC should make clear the precise terms and condition of access and interconnection. Uncertainity alone will delay and deter entry.

[17] Swan Creek Communications, Inc. v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994) (quoting Silver Star Communications-Albany, Inc., 3 FCC Rcd. 6342, 6349 (Rev. Bd. 1988)).

[18] 670 F.2d 215, 230 (D.C. Cir. 1981), cert. denied, 457 U.S. 1119 (1982) (emphasis added). See also Garden State Broadcasting v. FCC, 996 F.2d 386, 389-90 (D.C. Cir. 1993)(ruling that withholding certain documents did not meet the high standard of candor).

the United States Court of Appeals for the District of Columbia Circuit, Communications Law, 64 Geo. Wash. L. Rev. 946 (1996).

While these precedents have been developed largely in the Commission's responsibilities in broadcasting, they apply to all FCC applicants and thus remain apt here.[19] The need to insist on a high standard of honesty stems from the enormity of the processing tasks confronting the FCC. Because it must process tens of thousands of licenses, the FCC relies heavily on the "completeness and accuracy of the submissions made to it."[20] This reliance has prompted the Commission to insist that applicants inform the Commission of the facts needed for it to fulfill its obligations. Thus, Rule 1.65, holding each applicant "responsible for the continuing accuracy and completeness of information furnished in a pending application," applies to *all* applications -- not only broadcast applications. The integrity of the 271 process deserves no lesser standard.

A high standard should be applied here for at least two reasons. First, as noted, the ninety day period which Congress

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[19] See TeleSTAR, Inc., 3 FCC Rcd 2860, 2866 (1988), affd. without opinion 886 F.2d 442 (D.C. Cir. 1989) (policies regarding applicant's character vary from broadcast to common carrier, but "those differences are not pertinent [where issues raised involve applicant's] relationship to the Commission and the integrity of the Commission's processes.... Lack of candor and misrepresentation are sufficient grounds for the adverse action here"). Also see Application of Nancy Naleszkiewicz, For a Contruction Permit to Establish a New Cellular System, 8 FCC Rcd 2777 (1993); Password, Inc., 76 FCC 2d 465 (1980).

[20] RKO General, Inc. v. FCC, 670 F.2d at 232.

has assigned to the Commission's review here is dramatically short, especially given the size of the record created and the public importance of the subject matter. This means that the FCC, and interested parties, should not have to doubt which part of the record might be true and which part -- whether by commission or omission -- untrue. Second, at least some part of the Commission's determination here requires predictive judgment as to future conduct by the applicant BOC, such as whether Section 272 compliance will occur, and whether the BOC will continue to provide interconnection and access to its network on a lawful basis. If the very application under consideration is not trustworthy, then the public can have no confidence that the *future* conduct of the applicant will be any better.

II. THE FCC MAY RELY ON THE PAST AND PRESENT CONDUCT BETWEEN A BOC AND ITS LONG DISTANCE AFFILIATE IN ORDER TO MAKE ITS SECTION 271(d)(3) FINDING.

In its brief,[21] BellSouth argues that "prior to receiving interLATA authorization and establishing BSLD as a Section 272 affiliate, BST and BSLD need not conduct transactions in accordance with the requirements of Section 272."[22] The BOC further asserts that "the Act does not empower the Commission to require full Section 272 compliance before the BOC applicant

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[21] BellSouth made a similar argument in its Petition for Reconsideration and Clarification of the Commission's Order denying Ameritech Michigan's Section 271 Application. See Petition of BellSouth Corp. For Reconsideration and Clarification, CC Docket No. 97-137 at 6-7.

[22] BellSouth Br. at 59.

receives interLATA authorization."[23] This strained and illogical interpretation is easily rejected.

Sections 271 and 272 work in tandem to establish the conditions under which a BOC may provide in-region interLATA service. In pertinent part, Section 271(d)(3) states that "*[t]he Commission* shall not approve the [Section 271] authorization requested in an application . . . unless *it finds* that . . . the requested authorization will be carried out in accordance with the requirements of section 272 . . . . The Commission shall *state the basis* for its approval or denial of the application."[24] Section 271(d)(3) does not provide the FCC with guidance on how to make its finding. Nor does it limit the information upon which the FCC may rely to make its finding.

The broad language of Section 271(d)(3) would seem on its face to permit the Commission to review any relevant evidence to determine whether a BOC applicant will comply with the requirements of Section 272. Indeed, prohibiting the Commission from considering an applicant's past and present performance would essentially prevent the Commission from making any finding at all. Under such an interpretation, the BOC would only be required to recite the magic words that it would in the future comply with the statute and the Commission's rules. The Commission would be forced to accept this paper promise and look

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23 Id. (emphasis in original).

24 47 U.S.C. § 271(d)(3) (emphasis added).

no further. It could also allow the BOC interLATA affiliate to unlawfully benefit, on a going-forward basis, from misconduct in the past (i.e., prior to Section 271 authorization), thereby allowing the very discrimination and cross-subsidization which the separate subsidiary provisions are designed to prevent.

At most, Section 271(d)(3) is ambiguous. The Commission's interpretation of the provision to permit consideration of past and present compliance with Section 272 is therefore permissible if reasonable.[25] As explained, the *only* reasonable interpretation of the statute is that it permits such a review.

BellSouth has itself recognized that in at least some instances "'past and present behavior' under applicable rules may be relevant to ensuring future compliance with Section 272."[26] In an apparent attempt to hedge its bets regarding what the FCC can and cannot rely upon to make its Section 271(d)(3) finding, BellSouth attempts to show past and present compliance with the FCC's rules and the requirements of Section 272.[27] This attempt, however, largely consists of unsubstantiated representations and

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[25] See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

[26] BellSouth Br. at 59. In fact, BellSouth concedes that in some instances past and present behavior may be "highly relevant" to future Section 272 compliance. See id.

[27] "[I]n order to provide the Commission with what it may deem 'relevant' information, BellSouth includes with its application a description of all transactions between BST and BSLD to date as well as a description of future services that may be provided pursuant to written agreements." BellSouth Br. at 59 (citation omitted).

indeed reveals that BellSouth has failed to comply with Section 53.203(a)(3) of the Commission's rules. That provision prohibits a BOC or BOC-affiliate, other than the Section 272 affiliate itself, from performing "any operating, installation, or maintenance functions associated with facilities that the section 272 affiliate owns or leases from a provider other than the BOC."[28] The Jarvis affidavit states that BST provided switch testing and other equipment testing to BSLD.[29] As Sprint explained in its Petition to Deny, switch testing would seem to constitute either operation, installation, or maintenance of switching facilities.[30]

BellSouth's performance in this regard presents an example of the potential for abuse under BellSouth's view of Section 272 compliance. If the FCC were not permitted to view past and present conduct during the Section 271 application process, nothing would prevent a BOC from using its employees, finances, and other resources to "start-up" the Section 272-affiliate prior to Section 271 approval. Discrimination and cross-subsidy could be achieved before the FCC would even have the chance to review the BOC's relationship with its long distance affiliate. Moreover, as the Justice Department's expert witness Dr. Marius

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28 47 C.F.R. § 53.203(a)(3).

29 See Jarvis Aff. at ¶ 14(c)(11) ("BST provided facilities and staff to test BSLD equipment including SCPs and Lucent #5ESS switch" at an amount totaling $42,800).

30 See Sprint Petition to Deny at 43-44.

Schwartz has explained, any attempt to remedy these problems after Section 271 approval has been granted is much less likely to be successful than pre-approval enforcement efforts.[31] This is especially true of technical discrimination. The only sensible approach therefore is for the Commission to establish compliance standards while the BOC still has the incentive to cooperate.

III. A CLEC NEED NOT HAVE AN INTERCONNECTION AGREEMENT WITH A PERFORMANCE SCHEDULE IN ORDER TO HAVE MADE A "QUALIFYING REQUEST."

In its comments in support of the BellSouth application, Ameritech tries once again to limit the contexts in which an application for Section 271 authority can be reviewed under Track A. The newest version of the argument is that, in order to have made a "qualifying request" which triggers the application of Track A, a CLEC must either (1) already provide facilities-based service to residential and business subscribers or (2) have entered into an "interconnection agreement that commits the potential competitor to a reasonable schedule for the commencement of such service" and comply with that schedule.[32] This argument violates Commission precedent, the language of the statute and sound public policy.

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31 See Supplemental Affidavit of Marius Schwartz on Behalf of U.S. Department of Justice at ¶¶ 36-40 ("Schwartz Supplemental Aff.").

32 Comments of Ameritech at 7.

The Commission has correctly found that the application of the Track A standard is triggered by a qualifying *request* for access and interconnection.[33] The standard does not require that a CLEC have entered into a signed agreement.[34] Ameritech's interpretation of Section 271(c)(1), however, would require that the requesting carrier have *signed* an interconnection agreement in order for the Track A standard to apply.[35] The CLEC could not meet the first prong of the Ameritech test (i.e., that it be providing facilities-based service) unless it has at the very least signed an agreement that enables it to exchange traffic

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[33] See Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Memorandum Opinion and Order at ¶¶ 34-40 (released June 26, 1997) ("Oklahoma Order").

[34] Of course, any CLEC that has made a qualifying request will enter into an interconnection agreement with the BOC. The point here is that the CLEC need not have entered into an agreement to trigger the application of the Track A standard.

[35] Ameritech indicates that the FCC may engage in its "predictive judgment" before any interconnection agreement has been approved in a state. Once an interconnection agreement has been signed and approved, however, the Commission must rely on implementation schedules. See Comments of Ameritech at 7 ("Once there is an approved agreement, the Commission need not -- indeed, may not -- rely on 'difficult predictive judgments' based on the purported desires and forecasts of a BOC's 'potential' competitors to determine whether the BOC has received a qualifying request"). Since there is likely to be at least one approved interconnection agreement in every state that is subject to a Section 271 application, Ameritech's interpretation would eliminate *all* situations in which the Commission could engage in predictive judgments regarding the prospects of a particular CLEC for entering the local market.

with the incumbent. The second prong of the Ameritech test by its terms also requires the presence of an interconnection agreement (with an implementation schedule). Thus, although characterized as merely a way to "focus" the FCC standard, Ameritech's approach in fact directly contradicts the Commission's interpretation of Section 271(c)(1).

Nor is there any basis in the language of the statute for Ameritech's argument. First, the Commission's standard is mandated by Congress' use of a CLEC "request" throughout Section 271(c)(1)(B) as the triggering event for the application of the Track A standard.[36] Ameritech however relies on the exception to this rule found in Section 271(c)(1)(B)(ii). That provision states that, even where a carrier has received a qualifying request, it may proceed under Track B if the CLEC (or combination of CLECs) has "violated the terms of an agreement approved under section 252 by the provider's failure the comply, within a reasonable period of time, with the implementation schedule contained in such agreement."[37] This provision does not require that the CLEC have entered into an interconnection agreement in order to have made a qualifying request. It does not require that a qualifying Track A CLEC have an implementation schedule in its interconnection agreement. And even where there is an agreement, and an implementation schedule, the provision does not

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[36] See 47 U.S.C. § 271(c)(1)(B).

[37] 47 U.S.C. § 271(c)(1)(B)(ii).

require CLEC compliance with the implementation schedule except where failure to do so would constitute a violation of the interconnection agreement. The statute *only* addresses the situation where a CLEC has violated an obligation under the interconnection agreement to implement interconnection arrangements in accordance with an agreed-upon schedule. Section 271(c)(1)(B)(ii) is therefore a specific and narrow exception to the general rule that a BOC must comply with Track A, "the primary vehicle for BOC entry in section 271,"[38] where it has received a qualifying request.

The broad application of this provision suggested by Ameritech would lead to absurd results that Congress could not have intended. For example, Ameritech would attribute no legal significance to a prospective facilities-based CLEC with a signed interconnection agreement that has built an extensive independent network, simply because the CLEC does not have an implementation schedule in its interconnection agreement. Ameritech would also apparently hold a Track A CLEC to an implementation schedule even

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[38] See Oklahoma Order at ¶ 41. Section 271(c)(1)(B)(ii) leaves to the state commission the determination of whether the Track A CLEC has complied with the implementation schedule. See id. Ameritech does not discuss this issue. It should be emphasized, however, that the FCC retains the authority to make all final determinations as to whether the requirements of Section 271(c)(1) have been met. See 47 U.S.C. § 271(d)(3) ("The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that -- (A) the petitioning Bell Operating Company has met the requirements of subsection (c)(1)").

if it were under no legal obligation to follow the schedule and even if BOC resistance makes compliance impossible.[39]

In addition to its other flaws, Ameritech's argument ultimately rests on the incorrect view that CLECs have the incentive to enter into interconnection agreements to keep the BOCs out of the long distance business. As Dr. Marius Schwartz explains in his supplemental affidavit, however, CLECs have the incentive to enter the local market regardless of whether such entry will make Section 271 approval more likely in a particular state.[40] As the absence of local competition in the SNET and GTE regions demonstrates, the central obstacle to local entry is BOC resistance, not CLEC strategic behavior.[41]

Ameritech argues that its standard for Section 271(c)(1) is necessary because the standard adopted in the Oklahoma Order "is unduly vague, and therefore likely to result in arbitrary and capricious Commission action on Track B applications."[42] Ameritech also states that its standard would relieve "carriers, the Commission, and the courts from reliance on the Commission's

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39 The legal and regulatory uncertainty caused by the BOCs' resistance tactics makes compliance with any implementation schedule uncertain at best. CLECs cannot predict the timing of their entry when they cannot be sure which interconnection arrangements are available and at what prices.

40 See Schwartz Supplemental Aff. at ¶¶ 27-31.

41 See id. at ¶ 30.

42 Comments of Ameritech at 4.

unbounded and arbitrary 'predictive judgment.'"[43] In other words, Ameritech does not think the FCC can be trusted to exercise its informed judgment to determine whether a particular carrier will provide facilities-based service. Like its advocacy on the public interest standard, Ameritech would eliminate the Commission's discretion to consider whether local competition has been enabled. This is because Ameritech apparently has no intention to cooperate in enabling competition in the local market. Ameritech's position is of course groundless and self-serving as well as insulting to the Commission. It is helpful only as a reminder that Ameritech is convinced that it can enter the in-region, interLATA business without ever complying with the legal prerequisites for doing so.

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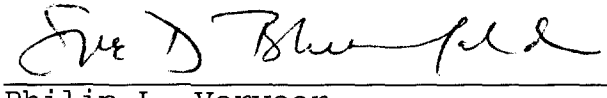
[43] Id. at 8.

CONCLUSION

For the foregoing reasons, BellSouth's application must be denied.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



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November 14, 1997

APPENDIX

BellSouth Telecommunications, Inc.
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November 4, 1997

VIA FEDERAL EXPRESS

Ms. Melissa Closz
Director - Local Market Development
Sprint Communications
Suite 400B
151 Southhall Lane
Maitland, Florida 32751

Re: UNE Combinations

Dear Ms. Closz:

This is a follow-up to our conversation of October 29, 1997 regarding BellSouth's policy of combining of Unbundled Network Elements (UNEs).

The Eighth Circuit Court plainly stated that the Act "unambiguously indicates that requesting carriers will combine the UNEs themselves." Therefore, BellSouth has no legal obligation to provide combined UNEs to Sprint Communications. The court, however, did affirm that an ALEC may itself combine UNEs. BellSouth will provide to Sprint Communications, at the rates established by the various state commissions, the individual UNEs delineated in the Sprint Communications/BellSouth interconnection agreements.

BellSouth recognizes that the interconnection agreements that have been executed thus far, obligate BellSouth to accept and provision UNE combination orders. Thus, until the Eighth Circuit's opinion becomes final and non-appealable (see, General Terms and Conditions, Section 9.3), BellSouth will abide by the terms of those interconnection agreements, as BellSouth expects Sprint Communications to do.

BellSouth has consistently taken the position that Sprint Communications is free to use UNEs recombined by BellSouth in any manner it chooses. However, in all states where we have an approved interconnection agreement (Florida, Georgia, and North Carolina), when Sprint Communications orders a combination of UNEs or orders individual UNEs that, when combined, duplicate a retail service, BellSouth will treat these orders for the purposes of billing and provisioning, as resale.

BellSouth is not required to offer combinations of UNEs except as negotiated between BellSouth and Sprint Communications. Moreover, "switch as is" situations will be treated as resale situations with the pricing rules applicable thereto, not as the sale of UNEs.

BellSouth, as it has consistently done in the past, is prepared to discuss all issues Sprint Communications may raise. To the extent you have any further questions or comments regarding BellSouth's policies or major issues regarding implementation interconnection agreements, please direct them to me.

Sincerely,

Pat C. Finlen
Manager - Interconnection Services Pricing

cc: Jerry D. Hendrix